D.B. CIVIL SPECIAL APPEAL(W)NO.6/2006

Shri Ram Swaroop Gupta & Anr.
Vs.
Additional Civil Judge(J.D.)No.5, Jaipur City, Jaipur & Anr.

DATE OF ORDER :: 02-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Babu Lal Gupta, for the appellant.

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed writ petition challenging the order of the trial court by which application of the plaintiff-respondent for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure had been allowed.

The plaintiff-respondent filed suit for eviction of the appellant on the grounds of personal necessity and default. As regards personal necessity, she stated that the premises are needed by her son for doing business. During pendency of the suit, her husband retired from service and in the circumstances she filed application for amendment of the plaint to the effect that premises are also needed by the husband after his retirement. The prayer was opposed by the appellant on

the ground that retirement of the plaintiff's husband is a new cause of action, for which a fresh suit may be filed under the Rajasthan Rent Control Act, 2001.

It is relevant to mention here that suit was filed when the Rajasthan Premises(Control of Rent and Eviction)Act, 1950 was in force. The said Act was repealed by the Rajasthan Rent Control Act, 2001.

Counsel for the appellant reiterated the appellant's case that for a fresh cause of action, another suit may be filed under the new Act and the plaint of the previous suit cannot be amended; and the fact constituting fresh cause of action therefore cannot be incorporated in the plaint which had been filed during currency of the old Act. In support of the contention, counsel placed reliance on Heera Lal Vs. M/s. Uttam Chand Deshraj, 2005 WLC 759(UC). The decision lends no help to the appellant. All that has been stated is that where the suit is pending under the old Act, it is to be decided in accordance with the old Act in view of the provisions of Section 32 of the new Act.

Sub-section (3) of Section 32 which contains the repeal and savings clause, lays down that all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be continued and disposed of,

in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. The burden of the section is that pending proceedings shall be continued and disposed of under the provisions of the old Act. Section 32 in stead of helping the appellant rather lends assistance to the respondent.

As regards submission of the counsel that retirement of the plaintiff's husband constitutes a fresh cause of action, we may observe that the expression 'cause of action' has been held to be bundle of facts which the suitor has to prove to get relief. The suit had been filed for eviction on grounds of default and personal necessity. In order to prove her case of personal necessity, the plaintiff is required to establish that she needs the premises for the benefit of her son. By virtue of the amendment, she now wants to further say that premises are also needed for her husband after his retirement. The cause of action is continuing and we do not think that the plaintiff should be asked to file a fresh suit for eviction on the ground of personal necessity, after the husband's retirement. The amendment is in accord with the Order VII Rule 7 of the Civil Procedure Code under which subsequent events can be taken into account for moulding the reliefs.

In the above premises, we find no error in the order of the trial court and the learned Single Judge therefore did not commit any error in dismissing the writ petition.

The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen